

**FLEIT, KAIN,
GIBBONS, GUTMAN,
BONGINI & BIANCO P.L.**

ATTORNEYS AT LAW

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TELECOPIER TRANSMITTAL FORM

DATE: March 28, 2006
TO: Examiner Anil Khatri
FIRM: USPTO, Group Art Unit 2193
FAX #: (571) 273-8300
PHONE: (571) 272-3725
FROM: Jon A. Gibbons

TOTAL NUMBER OF PAGES: 17
(INCLUDING THIS PAGE)

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MESSAGE:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Jason D. HIBBEKER et al.

Serial No.: 09/939,005

For: *DYNAMIC CPU USAGE PROFILING AND FUNCTION CALL TRACING*

Enclosed are the following:

Petition (2 pgs.) including Exhibit A (2 pgs. - Notice of Abandonment); Exhibit B (10 pgs. - Response); Exhibit C (1 pg. - Transmission Verification Report); Exhibit D (1 pg. - Auto-Reply Facsimile Transmission)

Docket No.: POU920010019US1

140-A01-001

March 28, 2006

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MAR 28 2006 **PATENT**

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class envelope addressed to: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below: On March 28, 2006

Date

Karen Taragowski
Name

Karen Taragowski
Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	: 09/939,005	Confirmation No:	3418
Applicants	: Jason D. Hibbeler, et al.		
Filed	: 08/24/2001		
TC/A.U.	: 2193		
Examiner	: Anil KHATRI		
Docket No.	: POU920010019US1		
Customer No.	: 23334		

VIA FACSIMILE (571) 273-8300

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Attn: Examiner KHATRI Tel (571) 272-3725

PETITION UNDER 37 C.F.R. §1.181 (a) TO WITHDRAW

THE HOLDING OF ABANDONMENT

Sir:

In accordance with 37 CFR §1.181 (a), the Applicants respectfully petition the Commissioner for withdrawal of the holding of Abandonment. The Notice of Abandonment, dated March 13, 2006 (see Exhibit A), states that the reason for Abandonment is "Applicant's Failure to Timely File a Proper Reply to the Office letter Mailed on 15 June 2005."

In reviewing our file, Applicants timely filed via facsimile, a Response Under 37 C.F.R. §1.111 to the Office Action dated June 15, 2005 on August 3, 2005 (see Exhibit B). Please note that this Response was timely filed as evidenced by both the Transmission Verification Report (see Exhibit C) but also the Auto-Reply Facsimile Transmission generated by the U.S. Patent and Trademark Office (see Exhibit D). Both

Docket No. POU920010019US1

Page 1 of 2

09/939,005

these Facsimile Transmissions indicate that Applicants' Response was indeed received by the U.S. Patent and Trademark Office on 8/3/2005 at 11:56:04 AM (Eastern Daylight Time) and that a total of 8 pages (including cover page) were received.

A list of Exhibits submitted herewith are as follows:

- A. Notice of Abandonment dated March 13, 2006;
- B. Response to Office Action with a "Certificate of Mailing or Transmission" in compliance with facsimile transmission procedures under 37 CFR 1.8(a) and 37 CFR 1.6(f), a Transmittal Sheet and a Fax Cover Sheet all dated June 15, 2005;
- C. Transmission Verification Report automatically generated by our Facsimile Machine evidencing the total number of pages sent, the telephone number of the USPTO central facsimile machine, dated June 15, 2005; and
- D. Facsimile Transmission Report automatically generated from the USPTO evidencing the total number of pages received dated June 15, 2005 dated June 15, 2005.

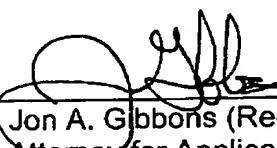
Therefore, Applicants did timely file a proper reply to the Office letter mailed on June 15, 2005. Applicants therefore respectfully request that the Commissioner withdraw the Notice of Abandonment dated March 13, 2006 and correctly enter the Response as filed on August 3, 2005.

Applicants believe that this petition is a non-fee petition. However, if it should be determined that a fee is required, please charge any fee that may be required to Deposit Account No. **50-1556**.

Respectfully submitted,

Date: 3/28/06

By: _____



Jon A. Gibbons (Reg. No. 37,333)
Attorney for Applicants
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MAR 28 2006

UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,005	08/24/2001	Jason D. Hibbeler	POU920010019US1	3418
23334	7590	03/13/2006	EXAMINER	
FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. ONE BOCA COMMERCE CENTER 551 NORTHWEST 77TH STREET, SUITE 111 BOCA RATON, FL 33487			KHATRI, ANIL	
			ART UNIT	PAPER NUMBER
			2191	
DATE MAILED: 03/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Received

MAR 13 2006

FBI - BOCA RATON, FL

Exhibit A

Notice of Abandonment	Application No.	Applicant(s)	
	09/939,005	HIBBELER ET AL.	
	Examiner	Art Unit	
	Anil Khatri	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on 15 June 2005.
 - (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) No reply has been received.

2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) The issue fee and publication fee, if applicable, has not been received.

3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) No corrected drawings have been received.

4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. The reason(s) below:


 ANIL KHATRI
 PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

USPTO 8/3/2005 12:00 PM PAGE 1/001 Fax Server
 TO: Auto-reply fax to 561 989 9812 COMPANY:



Auto-Reply Facsimile Transmission

TO: Fax Sender at 561 989 9812

Fax Information
 Date Received: 8/3/2005 11:56:04 AM [Eastern Daylight Time]
 Total Pages: 8 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received
 Cover
 Page
 =====>

Received Cover Page =====>	8/3/2005 11:52 561-989-9812 FLEIT KAIN ET AL. PAGE 01/001
	<p>FLEIT, KAIN, GIBBONS, GLUTMAN BONGINI & BLANCO P.L. ATTORNEYS AT LAW</p> <p>Miami - Fort Lauderdale - Boca Raton</p> <p>Fleit, Kain, Gibbons, Glutman, Bongini & Bianco P.L. 551 NY 77R Street, Suite 111 Boca Raton, FL 33487 Telephone: (561) 989-9812 Facsimile: (561) 989-9812 writers e-mail: gibbons@FocusOnIP.com</p>
	TELECOPIER TRANSMITTAL FORM
	<p>DATE: August 3, 2005 TO: Examiner April Khatari FIRM: USPTO, Group Art Unit 2103 FAX #: (571) 273-6830 PHONE: (571) 273-3725 FROM: Jon A. Gibbons</p> <p>TOTAL NUMBER OF PAGES: 8 (INCLUDING THIS PAGE)</p>
	IF YOU DO NOT RECEIVE ALL PAGES CLEARLY, PLEASE CONTACT US IMMEDIATELY
	MESSAGE:
	<p>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</p> <p>Applicant(s): Jason D. HIRZBLER et al. Serial No.: 09/939,005 For: DYNAMIC CPU USAGE PROFILING AND FUNCTION CALL TRACING</p> <p>Enclosed are the following:</p> <p>Transmittal letter (1 pg.); and Response (6 pgs.)</p>
	Docket No.: POU928010019US1 140-AU1-001 August 3, 2005
<small>CONFIDENTIALITY NOTE: THE INFORMATION CONTAINED IN THIS TRANSMISSION IS SOLELY PERMITTED AND CONFIDENTIAL INTENDED ONLY FOR THE USE OF THE ADDRESSEES IDENTIFIED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY REPRODUCTION, COPIING, FURTHER DISTRIBUTION, OR FORWARDING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. DUE TO THE UNCONTROLLED NATURE OF THE INTERNET, IF YOUR MESSAGE IS MISROUTED ACCIDENTALLY TO AN UNINTENDED RECEIVER AND THAT RECEIVER RETAINS AND USES THE INFORMATION CONTAINED IN THIS TRANSMISSION, WE WILL BE LIABLE FOR ANY DAMAGE RESULTING THEREFROM INCURRED BY YOU. THANK YOU.</small>	
<small>"Focus on IP" www.FocusOnIP.com</small>	

Exhibit B

TRANSMISSION VERIFICATION REPORT

TIME : 08/03/2005 11:55
 NAME : FLEIT KAIN ET AL.
 FAX : 561-989-9812
 TEL : 561-989-9811
 SER. # : 000L3J186396

DATE, TIME	08/03 11:52
FAX NO./NAME	USPTO - CENTRAL
DURATION	00: 02: 32
PAGE(S)	08
RESULT	OK
MODE	FINE ECM

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writer's e-mail: jgibbons@FocusOnIP.com

TELECOPIER TRANSMITTAL FORM

DATE: August 3, 2005
 TO: Examiner Anil Khatri
 FIRM: USPTO, Group Art Unit 2193
 FAX #: (571) 273-8300
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Serial No.: 09/939,005

For: DYNAMIC CPU USAGE PROFILING AND FUNCTION CALL TRACING

Enclosed are the following:

Transmittal letter (1 pg.); and Response (6 pgs.)

Docket No.: POU920010019US1

140-A01-001

August 3, 2005

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writer's e-mail: jgibbons@FocusOnIP.com

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140-A01-001

August 3, 2005

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MAR 28 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of : Atty. Docket No. POU920010019US1
 Jason D. HIBBELER, et al. : Group Art Unit: 2193
 Serial No. 09/939,005 : Examiner: Anil Khatri
 Filed: August 24, 2001 : Confirmation No. 3418
 For: DYNAMIC CPU USAGE PROFILING AND FUNCTION CALL TRACING

TRANSMITTAL

MAIL STOP AMENDMENT
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

SIR:

Transmitted herewith is a response in the above-identified application:

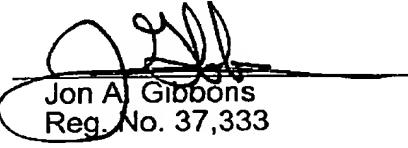
 No additional filing fee is required.The fee has been calculated as shown below. (*Small entity fees indicated in parentheses.*)

CLAIMS AS AMENDED						
(1)	(2) Claims Remaining After Amendment	(3)	(4) Highest Number Previously Paid For	(5) Extra Claims	(6) Rate	(7) Fee
Total Claims <i>(Small Entity)</i>	19	-	20	0	50.00 (25.00)	0
Independent claims <i>(Small Entity)</i>	3	-	3	0	200.00 (100.00)	0
Multiple Dependent <i>(Small Entity)</i>	0	-	0	0	360.00 (180.00)	0
Extension of Time Fee <i>(Small Entity)</i>	One Month \$120 (\$60)	Two Months \$450 (\$225)	Three Months \$1020 (\$510)			0
Total						\$0.00

XX The Commissioner is hereby authorized to charge any required fees to Deposit Account No. 09-0463.

Respectfully submitted,

Date: 8/3/05

By: 
 Jon A. Gibbons
 Reg. No. 37,333

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